

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In re	)	
	)	
WHARTON TELECOM HOLDINGS, INC.	)	File No. EB-02-IH-0895
	)	NAL/Acct. No. 200332080009
Applicant for Wireless Telecommunications	)	FRN 0005910450
Bureau Radio Service Authorization	)	
	)	

**NOTICE OF APPARENT LIABILITY FOR FORFEITURE**

**Adopted:** December 26, 2002

**Released:** December 27, 2002

By the Chief, Investigations and Hearings Division, Enforcement Bureau:

**I. INTRODUCTION**

1. In this Notice of Apparent Liability for Forfeiture ("NAL"), we find that Wharton Telecom Holdings, Inc. ("Wharton") failed to timely file its "long-form" application (FCC Form 601) and accompanying ownership report (FCC Form 602) following completion of the Commission's Lower and Upper Paging Bands Auction ("Auction No. 40"), in apparent willful and repeated violation of Sections 1.2107(c) and 1.2107(f) of the Commission's rules.<sup>1</sup> We conclude that Wharton is apparently liable for a forfeiture in the amount of \$3,000.

**II. BACKGROUND**

2. On December 5, 2001, Commission staff completed the auction of 15,514 licenses in Auction No. 40. Wharton was among the participants in that auction. On December 11, 2001, the Wireless Telecommunications Bureau issued a Public Notice that provided detailed information concerning specific post-auction obligations of winning bidders.<sup>2</sup> The Public Notice established December 27, 2001, as the deadline for winning applicants to submit their ownership and long-form applications. The Public Notice also announced that Wharton was a winning bidder in Auction No. 40.<sup>3</sup>

3. After the Commission's receipt and initial review of the Auction No. 40 long-form applications, Commission staff noticed that Wharton had failed to file its required long-form application. Commission staff subsequently contacted Wharton's representative. Thereafter, on January 10, 2002, Wharton submitted a Waiver Request and electronically filed its long-form application. In its Waiver Request, Wharton explained that it missed the long-form filing deadline due to inadvertence and

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<sup>1</sup> 47 C.F.R. §§ 1.2107(c), 1.2107(f).

<sup>2</sup> "Lower and Upper Paging Bands Auction Closes: Winning Bidders Announced," *Public Notice*, 16 FCC Rcd 21821 (2001).

<sup>3</sup> *Id.* at Attachment A.

unawareness that the long-form applications were due.<sup>4</sup> Wharton explained that it inadvertently updated its short-form application rather than filing a long-form application by the deadline.<sup>5</sup> Wharton offered several factors which it said contributed to its filing error, such as the death of its Chief Executive's sister and the fact that the filing deadline came during the holiday season.<sup>6</sup>

### III. DISCUSSION

4. Section 1.2107(c) of the Commission's rules provides that:

A high bidder that meets its down payment obligations in a timely manner must, within ten (10) business days after being notified that it is a high bidder, submit an additional application (the "long-form application") pursuant to the rules governing the service in which the applicant is the high bidder.<sup>7</sup>

This section further provides that long-form applications must be filed electronically.<sup>8</sup> Additionally, Section 1.2107(f) requires applicants to file an ownership report with its long-form application.<sup>9</sup> For Auction No. 40, the ownership form had to be filed manually.<sup>10</sup>

5. The purpose of the long-form application is to provide vital information concerning winning bidders and their qualifications to be Commission licensees. Public notice of acceptance of a winning bidder's long-form application triggers the establishment of the pleading cycle for petitions to deny.<sup>11</sup> The timely filing of a long-form application is thus essential to the efficiency of the competitive bidding licensing process.

6. On April 9, 2001, Commission staff first released a Public Notice announcing the upcoming Lower and Upper Paging Bands Auction.<sup>12</sup> Therein, auction participants were informed of

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<sup>4</sup> See Wharton's Waiver Request, FCC File No. 0000730894 (dated Jan. 11, 2001) ("Waiver Request"). The Wireless Telecommunications Bureau subsequently granted the Waiver Request. See *In the Matters of City Page & Cellular Services, Inc. d/b/a City Beepers, et al., Order*, DA 02-3558 (Policy and Rules Branch, CWD, rel. Dec. 23, 2002).

<sup>5</sup> Waiver Request at 2.

<sup>6</sup> *Id.* at 1-2.

<sup>7</sup> 47 C.F.R. § 1.2107(c).

<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. § 1.2107(f).

<sup>10</sup> Prior to September 10, 2002, the ownership form had to be filed manually. As of December 10, 2002, the ownership form must be filed electronically. See "Wireless Telecommunications Bureau Announces Availability of Electronic Filing of FCC Form 602," *Public Notice*, 17 FCC Rcd 16779 (2002).

<sup>11</sup> See 47 C.F.R. § 1.2108(b).

<sup>12</sup> See "Lower and Upper Paging Bands Auction Scheduled for June 26, 2001; Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedural Issues," *Public Notice*, 16 FCC Rcd 7657 (2001).

their post-auction filing obligations in the event they were winning bidders. Thus, Wharton was on notice even before the auction commenced that, if it were a winning bidder, it would have to electronically submit a properly completed long-form application within ten business days after release of the auction closing notice. In addition, on December 11, 2001, Commission staff issued a post-auction Public Notice establishing December 27, 2001, as the filing deadline and describing in detail the long-form application and ownership report filing requirements. Nevertheless, Wharton failed to file its long-form application and ownership report on time. In light of these facts, we conclude that Wharton failed to file its ownership report and long-form application by the established and well publicized deadline, in willful and repeated violation of Sections 1.2107(c) and 1.2107 (f) of the Commission's rules.<sup>13</sup>

7. Section 503(b)(1)(B) of the Communications Act of 1934, as amended, provides that any person who willfully or repeatedly fails to comply with the Act or the Commission's rules shall be liable for a forfeiture penalty.<sup>14</sup> The guidelines contained in the Commission's *Forfeiture Policy Statement* specify a base forfeiture amount of \$3,000 for failure to file required information.<sup>15</sup> The guidelines also permit the Commission to issue a higher or lower forfeiture amount based on such factors as the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, history of any prior offenses, ability to pay, and such other matters as justice may require. Wharton does not dispute that it failed to timely file the necessary forms. We believe a forfeiture is appropriate in this case, and see no basis for departing from the base forfeiture amount. Thus, we propose a forfeiture in the amount of \$3,000. This amount is consistent with other cases involving similar transgressions.<sup>16</sup>

#### IV. ORDERING CLAUSES

8. ACCORDINGLY, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Section 1.80 of the Commission's rules, Wharton Telecom Holdings, Inc. is hereby NOTIFIED of its APPARENT LIABILITY FOR A FORFEITURE in the amount of \$3,000 for willfully and repeatedly violating Sections 1.2107(c) and 1.2107(f) of the Commission's rules.

9. IT IS FURTHER ORDERED, pursuant to Section 1.80 of the Commission's rules, 47 C.F.R. § 1.80, that within thirty (30) days of the release of this Notice, Wharton SHALL PAY the full amount of the proposed forfeiture, or SHALL FILE a written response seeking reduction or cancellation of the proposed forfeiture.

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<sup>13</sup> The Commission has held that an act or omission is "willful" if it is a conscious and deliberate act or omission, whether or not there is any intent to violate the rule. *Southern California Broadcasting Company*, 6 FCC Rcd 4387 (1991). Furthermore, a continuing violation is "repeated" if it lasts more than one day. *Id.* at 4388.

<sup>14</sup> 47 U.S.C. § 503(b)(1)(B).

<sup>15</sup> *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Commission's Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087, 17114 (1997) ("*Forfeiture Policy Statement*"); *recon denied*, 15 FCC Rcd 303 (1999).

<sup>16</sup> See e.g., *PCS Partners, L.P.*, 16 FCC Rcd 5547 (EB 2001)(forfeiture paid)(proposing a \$3,000 forfeiture against winning bidder that filed its long-form application four days late and its ownership report two days late because of administrative oversight); *PinPoint Communications, Inc.*, 14 FCC Rcd 6427 (PSPWD, WTB 1999) (proposing a \$3,000 forfeiture against winning bidder that filed its long-form application six days late because of administrative oversight).

10. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment MUST INCLUDE the FCC Registration Number (FRN) referenced above and the NAL/Acct. No. referenced above.

11. The response, if any, must be mailed to Melanie A. Godschall, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12<sup>th</sup> Street, S.W., Room 3-B443, Washington DC 20554 and MUST INCLUDE the NAL/Acct. No. referenced above.

12. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the respondent submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the respondent's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

13. Requests for payment of the full amount of this Notice of Apparent Liability under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>17</sup>

14. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Federal Communications Commission, Enforcement Bureau, Investigations and Hearings Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

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<sup>17</sup> See 47 C.F.R. § 1.1914.

15. IT IS FURTHER ORDERED that copies of this Notice shall be sent, by Certified Mail -- Return Receipt Requested, to Wharton Telecom Holdings, Inc, Attn: Ronald K. Jones, 9454 Wilshire Blvd., Beverly Hills, CA 90212.

FEDERAL COMMUNICATIONS COMMISSION

Charles W. Kelley  
Chief, Investigations and Hearings Division  
Enforcement Bureau

October 2002

## ATTACHMENT A

## FCC List of Small Entities

As described below, a “small entity” may be a small organization, a small governmental jurisdiction, or a small business.

(1) Small Organization	
Any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.	
(2) Small Governmental Jurisdiction	
Governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.	
(3) Small Business	
Any business concern that is independently owned and operated and is not dominant in its field, <i>and</i> meets the pertinent size criterion described below.	
Industry Type	Description of Small Business Size Standards
<i>Cable Services or Systems</i>	
Cable Systems	Special Size Standard – Small Cable Company has 400,000 Subscribers Nationwide or Fewer
Cable and Other Program Distribution	\$12.5 Million in Annual Receipts or Less
Open Video Systems	
<i>Common Carrier Services and Related Entities</i>	
Wireline Carriers and Service providers	1,500 Employees or Fewer
Local Exchange Carriers, Competitive Access Providers, Interexchange Carriers, Operator Service Providers, Payphone Providers, and Resellers	

**Note:** With the exception of Cable Systems, all size standards are expressed in either millions of dollars or number of employees and are generally the average annual receipts or the average employment of a firm. Directions for calculating average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

International Services	
International Broadcast Stations	\$12.5 Million in Annual Receipts or Less
International Public Fixed Radio (Public and Control Stations)	
Fixed Satellite Transmit/Receive Earth Stations	
Fixed Satellite Very Small Aperture Terminal Systems	
Mobile Satellite Earth Stations	
Radio Determination Satellite Earth Stations	
Geostationary Space Stations	
Non-Geostationary Space Stations	
Direct Broadcast Satellites	
Home Satellite Dish Service	
Mass Media Services	
Television Services	\$12 Million in Annual Receipts or Less
Low Power Television Services and Television Translator Stations	
TV Auxiliary, Special Broadcast and Other Program Distribution Services	
Radio Services	\$6 Million in Annual Receipts or Less
Radio Auxiliary, Special Broadcast and Other Program Distribution Services	
Multipoint Distribution Service	Auction Special Size Standard – <b>Small Business</b> is less than \$40M in annual gross revenues for three preceding years
Wireless and Commercial Mobile Services	
Cellular Licensees	1,500 Employees or Fewer
220 MHz Radio Service – Phase I Licensees	
220 MHz Radio Service – Phase II Licensees	Auction special size standard - <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and controlling principals) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and controlling principals)
700 MHz Guard Band Licensees	
Private and Common Carrier Paging	
Broadband Personal Communications Services (Blocks A, B, D, and E)	1,500 Employees or Fewer
Broadband Personal Communications Services (Block C)	Auction special size standard - <b>Small Business</b> is \$40M or less in annual gross revenues for three previous calendar years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three calendar years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Broadband Personal Communications Services (Block F)	
Narrowband Personal Communications Services	
Rural Radiotelephone Service	1,500 Employees or Fewer
Air-Ground Radiotelephone Service	

800 MHz Specialized Mobile Radio	Auction special size standard - <b>Small Business</b> is \$15M or less average annual gross revenues for three preceding calendar years
900 MHz Specialized Mobile Radio	
Private Land Mobile Radio	1,500 Employees or Fewer
Amateur Radio Service	N/A
Aviation and Marine Radio Service	1,500 Employees or Fewer
Fixed Microwave Services	
Public Safety Radio Services	<b>Small Business</b> is 1,500 employees or less <b>Small Government Entities</b> has population of less than 50,000 persons
Wireless Telephony and Paging and Messaging	1,500 Employees or Fewer
Personal Radio Services	N/A
Offshore Radiotelephone Service	1,500 Employees or Fewer
Wireless Communications Services	<b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
39 GHz Service	
Multipoint Distribution Service	Auction special size standard (1996) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding calendar years Prior to Auction – <b>Small Business</b> has annual revenue of \$12.5M or less
Multichannel Multipoint Distribution Service	\$12.5 Million in Annual Receipts or Less
Instructional Television Fixed Service	
Local Multipoint Distribution Service	Auction special size standard (1998) – <b>Small Business</b> is \$40M or less average annual gross revenues for three preceding years <b>Very Small Business</b> is average gross revenues of \$15M or less for the preceding three years
218-219 MHz Service	First Auction special size standard (1994) – <b>Small Business</b> is an entity that, together with its affiliates, has no more than a \$6M net worth and, after federal income taxes (excluding carryover losses) has no more than \$2M in annual profits each year for the previous two years New Standard – <b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates)
Satellite Master Antenna Television Systems	\$12.5 Million in Annual Receipts or Less
24 GHz – Incumbent Licensees	1,500 Employees or Fewer
24 GHz – Future Licensees	<b>Small Business</b> is average gross revenues of \$15M or less for the preceding three years (includes affiliates and persons or entities that hold interest in such entity and their affiliates) <b>Very Small Business</b> is average gross revenues of \$3M or less for the preceding three years (includes affiliates and



	persons or entities that hold interest in such entity and their affiliates)
<b>Miscellaneous</b>	
On-Line Information Services	\$18 Million in Annual Receipts or Less
Radio and Television Broadcasting and Wireless Communications Equipment Manufacturers	750 Employees or Fewer
Audio and Video Equipment Manufacturers	
Telephone Apparatus Manufacturers (Except Cellular)	1,000 Employees or Fewer
Medical Implant Device Manufacturers	500 Employees or Fewer
Hospitals	\$29 Million in Annual Receipts or Less
Nursing Homes	\$11.5 Million in Annual Receipts or Less
Hotels and Motels	\$6 Million in Annual Receipts or Less
Tower Owners	(See Lessee's Type of Business)